In the High Court of Punjab and Haryana at Chandigarh

C.W.P. No. 14882 of 2003

Date of Decision: 22.2.2007

M/s Garg Steel

…Petitioner

Versus

Punjab Financial Corporation and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Kanwaljit Singh, Advocate,
for the petitioner.

Mr. Ruchin Midha, Advocate,
for Mr. Salil Sagar, Advocate,
for respondent Nos. 1 and 2.

Mr. Rajvir Wasu, Advocate,
for respondent No. 3.

JUDGMENT

M.M. KUMAR, J.

M/s Garg Steel (for brevity, 'the entrepreneur-petitioner') has approached this Court for issuance of directions to the Punjab Financial Corporation-respondent No. 1 (for brevity, 'the PFC') to release the entire loan amount sanctioned in its favour without any further delay. It has further been prayed that Small Industries Development Bank of India – respondent No. 3 (for

brevity, 'the SIDBI') be directed to release the soft loan amount as per National Equity Fund Scheme (for brevity, 'the Scheme'), which has been duly sanctioned. The entrepreneur-petitioner has also prayed for awarding damages, interest and waiver of interest on the amount already released.

Brief facts of the case may be noticed. On 28.10.2002, the entrepreneur-petitioner applied for financial assistant of Rs. 30 lacs to the PFC. The application was accepted and the entrepreneur-petitioner was sanctioned loan in two parts. A term loan of Rs. 21,25,000/- @ 15.5% interest p.a. was sanctioned as per the terms and conditions specified in the letter dated 28.10.2002 (P-1). Under the Scheme, the entrepreneur-petitioner was also sanctioned a soft loan of Rs. 7,50,000/- @ 5% interest p.a. All the terms and conditions of the soft loan have been incorporated in the letter dated 28.10.2002 (P-2). On 18.11.2002, the entrepreneur-petitioner also executed a mortgage deed (P-4). The entrepreneur-petitioner availed term loan to the extent of Rs. 17,00,000/- as is evident from the perusal of letter dated 7.4.2003, written by the entrepreneur-petitioner (P-7). There are numerous representations made by the entrepreneur-petitioner for the release of soft loan of Rs. 7,50,000/-, which was to be released under the Scheme. It is appropriate to mention that the amount of Rs. 17,00,000/- as term loan released to the entrepreneur-petitioner, was utilized in purchase of machinery and construction of building etc. Eventually, the entrepreneur-petitioner served a legal notice through its counsel on 9.4.2003 (P-10) wherein it is claimed that the entrepreneur-petitioner after utilizing Rs. 17,00,000/-, which was

sanctioned as term loan, has also spent a huge amount for setting up the unit by spending more than Rs. 25,50,000/- for raising construction and purchase of machinery. On account of non-payment of soft loan of Rs. 7,50,000/- and balance term loan, the work of the unit had come to a stand still. Therefore, request was made for release of the soft loan as well as term loan. There is some correspondence available on that issue between the entrepreneur-petitioner and the PFC. Having failed to obtain any relief, the entrepreneur-petitioner has approached this Court for issuance of directions as noticed in the preceding para.

In the reply, the PFC has admitted sanction of term loan of Rs. 21,25,000/- and soft loan of Rs. 7,50,000/- under the Scheme. It has been asserted that the amount of term loan was to be disbursed by the PFC from its own corpus subject to compliance of formalities mentioned in the sanction letter dated 28.10.2002 (P-1). But the soft loan was sanctioned by the PFC as an agent of the SIDBI with the condition that in case of non-availability of refinance from the SIDBI, the entrepreneur-petitioner was to undertake to pay normal interest on the amount of soft loan which was equal to the rate of interest charged on term loan. It was also claimed that out of the sanctioned term loan of Rs. 21,25,000/-, the PFC had already disbursed Rs. 17,00,000/-, which constitute 80% of the term loan and remaining 20% i.e. Rs. 4,25,000/- were to be disbursed by the PFC after compliance of remaining formalities as per the details available in the mortgage deed, dated 18.11.2002 (P-4). The entrepreneur-petitioner was required to comply with the following conditions:-

" Before seeking release last 20% of loan the company shall comply with the following:

a) NOC from Pollution Control Board, Punjab

b) Shall install factory main gate

c) Power connection letter from PSEB to extent of 75KW

d) Sanction letter of working capital limit of 603000/- from bank

e) Shall appoint experienced foreman.

f) The sanction of soft loan under NEF Scheme is linked with refinance from SIDBI. In case of non-availability of refinance from SIDBI, the concern shall undertake to pay normal rate of interest as is being charged on amount of term loan."

In respect of soft loan, the stand of the PFC is that the SIDBI could not release the same to it, which was duly sanctioned by it in favour of the entrepreneur-petitioner on 28.10.2002 (P-2). The matter was stated to have been placed in a meeting of Review Committee of the PFC, held on 11.7.2003, which is stated to have taken the following decision:-

"The Committee considered the case and observed that NEF component is yet to be released. After detailed deliberation, the Committee has recommended that release of NEF be linked with the sanction of the same by SIDBI and to process the case for the release of

> further loan amount on the basis of the norms and an undertaking be also obtained from the borrower for raising the funds equivalent to the NEF sanctioned under the scheme. The Committee has further recommended that the borrower may immediately be advised to clear the default."

It is appropriate to mention that the Scheme was framed by the SIDBI. The PFC was to disburse the soft loan only if the same was to be reimbursed by the SIDBI to it, failing which it was to disburse the soft loan on the same rate of interest which was being charged on term loan. It has, however, not been disputed that the PFC has addressed various communications to the SIDBI for release of soft loan. Reference in that regard may be made to letters dated 2.4.2003 and 5.5.2003 (R-5 & R-6 respectively). According to the PFC, the entrepreneurs including the petitioner had been pressing hard for the release of soft loan under the Scheme and names of 50 entrepreneurs have been listed in its letter dated 2.4.2003 (R-5). However, in its letter dated 5.5.2003, the PFC after referring to letter dated 2.4.2003 (R-5) has stated as under:-

> " Please refer to our letter No. PFC/6181 dated 2.4.2003 wherein we have requested you to convey the sanction of soft loan in NEW/NUM cases so as to enable us to release the amount to the respective borrowers. The reply from your side is still awaited. As the respective borrowers are pressing hard, we would again request you to expedite the sanction in these cases.

> We may further inform you that on the basis of the sanction of soft loan in NEW/NUM cases, the Corporation has disbursed the soft loan t the respective borrowers, the reimbursement of which is to be made by you. As the release of the soft loan in these cases is not linked with the sanction/release of LOC limit, you are kindly requested to release the soft loan to the Corporation in these case, the detail of claim in respect is being sent to you separately."

The SIDBI has filed its separate written statement and in para 2 has taken a categorical stand that the PFC had sought disbursement of Rs. 68,75,500/- as line of credit from it. It has further been asserted that the aforementioned amount had already been disbursed by it to three units which included an amount of Rs. 7,50,000/- disbursed to the entrepreneur-petitioner under the Scheme.

In order to seek clarification from the SIDBI, we directed on 18.01.2007 it to clarify as to whether the soft loan of Rs. 7,50,000/- sanctioned to the entrepreneur-petitioner had been released to the PFC? In the affidavit dated 6.2.2007, filed by Shri Namgial, General Manager, SIDBI, Sector 17-C, Chandigarh, it has been clarified that both the term loan of Rs. 21,25,000/- and soft loan of Rs. 7,50,000/- under the Scheme, in respect of the entrepreneur-petitioner, were sanctioned by it in favour of the PFC on 7.5.2004 as the re-finance limit was available. It has been pointed out that the PFC ought to have disbursed the term loan and soft loan to the entrepreneur-petitioner and claimed refinance of the same from the

SIDBI. It has further been asserted that the PFC had expressed its inability to disburse the soft loan to the entrepreneur-petitioner for various reasons. However, it appears that the principal reason was that the PFC was insisting on de-linking of refinance of soft loan under the Scheme from refinance of term loan, which the SIDBI had found to be contrary to the refinance scheme.

Mr. Kanwaljit Singh, learned counsel for the entrepreneur-petitioner has vehemently submitted that deserting the entrepreneur-petitioner midstream would be impermissible to respondent Nos. 1 and 3 because after availing term loan of Rs. 17,00,000/- and investing its own capital, the entrepreneur-petitioner cannot be left high and dry to face the vagaries of liquidation. He has emphasised that once the term loan of Rs. 21,25,000/- has been sanctioned as per the terms and conditions laid down in sanction letter dated 28.10.2002 (P-1) and soft loan of Rs. 7,50,000/- has been sanctioned at the interest rate of 5%, then after releasing a part of the amount the rest of the amount cannot be withheld as the entrepreneur-petitioner has raised huge construction and purchased machinery which would be rendered useless if rest of the amount is not released as per the terms and conditions. To support his argument, learned counsel has placed firm reliance on a judgment of Hon'ble the Supreme Court in the case of **Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd., (1983) 3 SCC 379**. According to the learned counsel, the entrepreneur-petitioner has changed its position to its detriment after utilizing and investing part of the term loan on

the promise that rest of the term loan as well as soft loan according to the terms and conditions would be made available. He has emphasised that the soft loan, according to the SIDBI was released on the line of credit as is evident from the perusal of para Nos. 2 and 3 of the written statement filed by the SIDBI and the inter se dispute between respondent Nos. 1 and 3, as referred to in para 4 of the preliminary submissions in the written statement of the SIDBI, should not cause prejudice to the interest of the entrepreneur-petitioner. He has then referred to para 7 of the affidavit of Shri Namgial, dated 6.2.2007, to point out that in any case the soft loan of Rs. 7,50,000/- was sanctioned on 7.5.2004 in favour of the entrepreneur-petitioner but still it was not released to the entrepreneur-petitioner for inter se controversy between respondent Nos. 1 and 3. Learned counsel has stressed that the stand taken by the PFC in its written statement is completely misleading where it has been asserted that the soft loan has not been released by the SIDBI.

Learned counsel for the PFC has argued that according to the terms and conditions incorporated in the mortgage deed, dated 18.11.2002 (P-4), the entrepreneur-petitioner could have availed soft loan at the rate of interest chargeable on term loan on account of the fact that the soft loan under the Scheme of SIDBI was not released. He has drawn our attention to the clauses in mortgage deed, dated 18.11.2002 (P-4) and has argued that the entrepreneur-petitioner was asked to avail the soft loan of Rs. 7,50,000/- at the same rate of interest which was chargeable on term loan but the entrepreneur-petitioner had refused. However, learned counsel for the SIDBI has

pointed out that the soft loan of Rs. 7,50,000/- was sanctioned by SIDBI and in that regard reference has been made to the application dated 19.12.2002 (Annexure R-1 attached with the written statement of SIDBI) and the averments made in para 2 of the written statement filed by the SIDBI to point out that the amount of Rs. 7,50,000/- was mentioned in this application by the PFC and it was asserted that the same had already been disbursed by the PFC to three units which included the unit of the entrepreneur-petitioner. He has then made reference to para 7 of the additional affidavit to argue that both term loan of Rs. 21,25,000/- and soft loan of Rs. 7,50,000/- were sanctioned by SIDBI to the PFC on 7.5.2004.

After hearing learned counsel for the parties and perusing the documents with their able assistance, we are of the considered view that this petition deserves to be allowed. The stand of the PFC, in fact, has been completely exploded by written statement filed by the SIDBI, inasmuch as, the amount of soft loan had, in fact, been sanctioned. On account of some inter se controversy between the PFC and the SIDBI the soft loan was not availed by the PFC and the same cannot constitute the basis for the PFC to insist on the entrepreneur-petitioner to avail soft loan at the rate of interest chargeable on the term loan. We cannot approve the view of the PFC for refusing to release the soft loan to the entrepreneur-petitioner because the condition incorporated in the mortgage deed, dated 18.11.2002 (P-4) could have been insisted only in case the soft loan was not sanctioned. The factual position discovered from the reply filed by the SIDBI and the additional

affidavit filed by its officer amply prove that sanction had been accorded as early as 7.5.2004 but for various reasons given by the PFC, it refused to avail the same.

We are further of the view that the principle of promissory estoppel as laid down by Hon'ble the Supreme Court in the cases of **Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P., (1979) 2 SCC 409** and Lotus Hotels (supra) would be attracted to the facts of the present case. In the case of Lotus Hotels (supra), the Gujarat State Financial Corporation has agreed to advance a loan of Rs. 30,00,000/- to the entrepreneur who proceeded to execute the project by setting up a 4-Star hotel at Baroda. He started suffering liability to set up a hotel by incurring huge expenses on the basis of the promise made by the Corporation to advance a loan of Rs. 30,00,000/-. It was in this situation that Hon'ble the Supreme Court, by following Motilal Padampat Sugar Mills's case (supra), invoked the principle of promissory estoppel by observing as under:-

> " The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be

> unequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.".

In the present case also, the PFC has sanctioned loan of Rs. 21,25,000/- and Rs. 7,50,000/-. It has refused to release the soft loan of Rs. 7,50,000/- on untenable and unwarranted grounds. In the meanwhile, part of the term loan released to the entrepreneur-petitioner has been utilised along with huge capital invested by the entrepreneur-petitioner. Obviously, the entrepreneur-petitioner has changed its position to its detriment and the aforementioned position as observed in Lotus Hotel's case (supra) is squarely applicable.

For the reasons aforementioned, this petition succeeds. The PFC is directed to release the soft loan of Rs. 7,50,000/- to the entrepreneur-petitioner at the interest rate of 5% as per the terms and conditions of soft loan agreement (P-2). The interest shall accrue from the date of disbursement of the loan. We further direct that the balance amount of term loan be also released to the entrepreneur-petitioner but no interest would be charged on the released amount from March, 2003. However, interest shall be charged from the date of release of the remaining instalment from the date it is released. The needful shall be done within a period of one month from today, subject to compliance of conditions as detailed in the mortgage deed, dated 18.11.2002 (P-4).

The writ petition is disposed of in the manner indicated above.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

February 22, 2007

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